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SUPREME COURT, U.S.

Nº. 98-127

In The
Supreme Court of The United States
October Term 1997

ALEX CAMPOS, et al.
Petitioners,

v.

TICKETMASTER CORPORATION
Respondent.

Petition For A Writ Of Certiorari
To The United States Court of
Appeals For The Eighth Circuit

REPLY TO BRIEF IN OPPOSITION

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REASONS FOR GRANTING THE WRIT

I.

CONCERT VENUES ARE TICKETMASTER'S CO-CONSPIRATORS IN THE SCHEME TO RAISE CONVENIENCE CHARGES

Despite Ticketmaster's attempt to paint concert venues as victims of its monopoly power, the actual allegations of the complaint are completely to the contrary:

- "Ticketmaster has acted as the 'ringmaster' of a nationwide cartel of venues who all benefit from the lack of competition in the market for ticketing services by sharing in the supracompetitive fees charged by Ticketmaster and paid by plaintiffs and members of the class." (Apdx. C at 75-76, Complaint ¶110.)
- "Ticketmaster has conspired with arena and venue owners across the country to fix, raise, maintain and stabilize the prices of ticket distribution services provided by Ticketmaster" (Apdx. C at 76, ¶111.)

In the face of these explicit allegations, the Eighth Circuit has based its novel "antecedent transaction" rule on a fundamental misreading of the complaint. As formulated by the lower court, "[a]n indirect purchaser is one who bears some portion of a monopoly overcharge only by virtue of an

antecedent transaction between the monopolist and another, independent purchaser." *Campos v. Ticketmaster Corp.*, 140 F.3d 1166, 1169 (8th Cir. 1998) (emphasis added). Venues are anything but "independent" of Ticketmaster in this regard. As co-conspirators in the scheme to extract higher convenience fees from consumers, arenas benefit indirectly from the increase in service charges that Ticketmaster has orchestrated all across the country.

Thus, Ticketmaster is wrong when it argues petitioners do not challenge here the Eighth Circuit's statement that the complaint contained "no proper allegation" of a conspiracy between Ticketmaster and venues. *Campos v. Ticketmaster Corp.*, 140 F.3d at 1171; Resp. at 7-8. What the Court of Appeals clearly meant by "no proper allegation" is that plaintiffs had failed to name the venues as party defendants. The lower court acknowledged that "plaintiffs do characterize the venues as beneficiaries of and participants in Ticketmaster's unlawful activity. . ." [140 F.3d at 1171, n.4], but felt free to ignore these allegations because the venues were not named as actual defendants. As antitrust plaintiffs are not required to name every co-conspirator in an unlawful scheme, this holding is in error.[1]

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[1] *Fontana Aviation, Inc. v. Cessna Aircraft Co.*, 617 F.2d 478, 481 (7th Cir. 1980) ("we are not satisfied that the *Illinois Brick* rule directly applies in circumstances where the manufacturer and the intermediary are both alleged to be co-conspirators in a common illegal enterprise resulting in intended

While it may be difficult to compute exactly how much the venues and Ticketmaster would have been able to charge as convenience fees in an unrestrained market, the trial court need not undertake such a calculation. The direct purchaser of ticket distribution services, the concert-going consumer, pays the entirety of the overcharge to Ticketmaster as a separate fee. The doctrine of joint and several liability for antitrust violators permits plaintiffs "to recover the full amount of damages from some, if not all, participants," *Texas Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 646 (1981), and it does not matter how Ticketmaster has shared some of its monopoly rents with its co-conspirators.

II.

THE EIGHTH CIRCUIT'S "ANTECEDENT TRANSACTION" RULE IS BASED ON MISTAKEN FACTUAL ASSUMPTIONS

The Eighth Circuit's decision makes numerous assumptions about how the market for ticket distribution services operates which are in direct conflict with the actual allegations of the complaint. Most notably, the lower court assumed that "ticket buyers only buy Ticketmaster's services

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injury to the buyer."); *Arizona v. Shamrock Foods Co.*, 729 F.2d 1208, 1214 (9th Cir. 1994), *cert. denied*, 469 U.S. 1197 (1985) ("We hold that the policy considerations identified in Illinois Brick do not apply to the consumers' allegations of a conspiracy between the grocery stores and Shamrock to fix the retail price of those products.)

because concert venues have been required to buy those services first." 140 F.3d at 1171. Venues do not "buy" anything when a consumer pays a convenience fee directly to Ticketmaster. The only "buyer" in this transaction is the prospective concert-goer seeking to avoid the inconvenience of standing in line at the venue by purchasing his or her ticket by telephone from Ticketmaster.

The majority opinion also assumes that the combined cost of the ticket and service fees is "obviously a price that the market will bear," 140 F.3d at 1172 (citation omitted), and courts should be indifferent as to how the charges are allocated between tickets and convenience fees. In fact, the complaint alleges two separate markets whose prices move independently of each other. ("As a result of [Ticketmaster's] monopoly power, increases in ticket service charges have outpaced increases in ticket prices over the past five years." (Apdx. C at 60, ¶49.)) Consumers are entitled to purchase both tickets and ticket convenience services in unrestrained markets. If profit-maximizing venues could have raised prices for convenience fees before Ticketmaster gained its monopoly, they would have done so on their own. Consumers have paid supracompetitive prices for convenience fees and handling charges precisely because Ticketmaster has conspired with venues to violate the antitrust laws, and plaintiffs have borne the full weight of the overcharges.

III.
CONCLUSION

The Eighth Circuit's new "antecedent transaction" rule is an unwarranted extension of *Illinois Brick* which wrongly dismisses antitrust damages claims brought by consumers who have purchased supracompetitively priced services directly from antitrust violators. Petitioners respectfully request that this Court issue its Writ to the Eighth Circuit to foreclose this improper application of *Illinois Brick*.

Respectfully submitted.

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